missions made before us on this issue were also addressed to the trial judges by counsel who defended the appellant at the trial. The trial judges having seen and heard Idros and having considered his evidence in the light of all the submissions made on behalf of the appellant, held that the gun was intentionally fired at Idros. It follows that if it was intentionally fired at Idros, it was fired with intent to cause physical injury to him.

Such a finding of fact, which is supported by evidence which was believed by the trial judges, cannot be disturbed by an appellate court unless there are good grounds for doing so. We can see none in this case.

Finally, it is suggested that the gun was fired at Idros after the robbery was over and the robbers were speeding away from the scene of the robbery and that therefore the act of firing at Idros did not fall within section 5 of the Arms Offences Act, 1973 because it was not done in the course of robbery.

In our opinion the point taken is without substance in view of the definition of robbery.

Robbery is defined in section 390 of the Penal Code as follows: —

"390.—(1) In all robbery there is either theft or extortion.

(2) Theft is "robbery" if, in order to the committing of the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

(3) xxx xxx."

As the shot was fired at Idros by one of the robbers while he and his four companions were carrying away the booty, the act of firing was done in the commission of the gang robbery. There is support for this view in *Shyam Behari* v. *State of Uttar Pradesh.*[1]

In our judgment, the trial judges were correct in calling upon the appellant to enter upon his defence on both charges. The appellant did not give evidence on oath. He made a statement from the dock. It was not clear from his statement, what his defence was on the first charge. His defence on the second charge was duress. He claimed that he was compelled to commit that offence at gun point. The trial judges disbelieved him and rejected this defence. The appellant did not raise any other matter. He did not say what steps, if any, he had taken to prevent the use of firearms in both robberies.

In our opinion the trial judges were correct in deciding that the case against the appellant on both charges had been proved beyond a reasonable doubt and in convicting him on both charges. The appeal against both convictions fails and is dismissed.

Appeal dismissed.

Solicitor: *David Marshall.*

SUNDARI RAJA SINGAM v. RASARATNAM RAJA SINGAM

[O.C.J. (Choor Singh J.) February 27, 1976]

[Singapore — Divorce Petition No. 99 of 1974]

Family Law — Matrimonial proceedings — Petition for divorce — Allegation of cruelty on husband's part — Whether facts sufficient to constitute cruelty.

The parties were married on March 17, 1968 and except for a short period of two months, the parties had lived separately. On June 10, 1970, the petitioner gave birth to a son and although the respondent came and saw his son and his wife at the maternity hospital, there was no reconciliation for a number of years. In 1974 the parties began to live together again for about six months and on December 2, 1974 the petitioner left the matrimonial home with her son and went to live with her parents. The petitioner relied on three incidents which took place during this period and said that the cumulative effect of those incidents was that she became so frightened of living with him, that she could not stand it any longer and had to leave him. The first incident was over their son's illness. The respondent took their son to see a specialist at the hospital and came back with some medicine. The petitioner took the medicine to another dispenser to countercheck if it was the right medicine. As a result of this, a quarrel ensued between the parties and the petitioner said that she was slapped hard on the ear. The second incident was over the telephone bill and the parties scratched each other during the quarrel. The third incident occurred when the respondent was doing physical exercises at their home. He requested the petitioner to hold his legs while he stood on his head. In the course of this, one of his legs came into contact with the petitioner's nose and it bled.

The petitioner sought to dissolve her marriage on the ground of her husband's cruelty.

Held: (1) the petitioner had failed to prove beyond a reasonable doubt that there was danger to her life, limb or health, bodily or mental, or a reasonable apprehension of it;

(2) in a case of this nature the conduct complained of must be looked at as a whole and it must be looked at in the light of the sort of people the parties were.

Case referred to:-

(1) *Koh Teng Lam* v. *Elsie Koh* [1976] 1 M.L.J. 103.

DIVORCE PETITION.

N. Vaithinathan for the petitioner.

J. B. Jeyaretnam for the respondent.

Choor Singh J.: This is a wife's petition seeking the dissolution of her marriage on the ground of her husband's cruelty.

The parties were married at the Registry of Marriages at Johor Bahru on March 17, 1968. The husband was then employed as a teacher in Kuala Lumpur and the wife who was also a teacher was employed in Singapore. After the marriage, the wife continued to live with her parents in Kim Keat Road, Singapore and the husband in Kuala Lumpur. At weekends the husband used to drive down to Singapore and spend the weekend with his wife at her parents' house. Sometimes she used to go up to Kuala Lumpur by train and spend the week-end there with her husband. This lasted till the end of December 1969 when the parties set up a matrimonial home in Johor Bahru as the husband had by then obtained a transfer from Kuala Lumpur to Johor Bahru.

The parties lived together in their matrimonial home from December 1969 to January 18, 1970 when the wife left the matrimonial home and went to live with her parents in Singapore.

On June 10, 1970 the petitioner gave birth to a son and although the respondent came and saw his son and his wife at the maternity hospital, there was no reconciliation between the parties for a number of years.

In July 1973 when the son was three years old the petitioner made efforts to effect a reconciliation but without success. In January 1974 the petitioner's father wrote to the respondent who did not reply. The petitioner's father then spoke to the respondent on the telephone at his school and the respondent is alleged to have said, "I am not interested. It is already five years."

The petitioner then commenced these proceedings. After the petition was served on the respondent, he made several telephone calls to the petitioner. He also wrote to her and finally brought his solicitor to see her. The petitioner says that as a result of assurances given to her by the respondent and his solicitor and for the sake of her son, she agreed to live again with the respondent although she says she "was afraid and rather unhappy about reconciliation."

In May 1974 the parties began living together at 60 Burghley Drive, Singapore, which property the petitioner had purchased during their separation with a Government loan. Within a few months of their living together, there were again disagreement and quarrels. The petitioner says this:

"... I found that he had not changed. He was very hard to please. He was as usual. I had to be the provider, buy everything for the house. All the furniture was bought with my money. We had frequent quarrels over money matters and over bringing up of the child. All my suggestions were stupid according to him. He was always displeased with me. He said that I was always giving money to my parents; that I did not know how to cook and things like that. He said that I should be totally submissive and should not question him. He said I was not what he wanted me to be. He stopped me from marketing. He was so suspicious of men — even the breadman and the egg man. I was to keep an account of everything I spent while he said he did not have to do that.

He took away my cheque book and car registration book and said that everything belonged to him and that I was not to argue with him. I went to the R.O.V. and obtained a replacement by making a statutory declaration. ..."

The parties lived together at 60 Burghley Drive for about six months only. They began living and cohabiting there in May 1974 and on December 2, 1974 the petitioner again left the matrimonial home with her son and went to live with her parents.

There are three distinct phases in this marriage:

1. From March 17, 1968 to December 1969
2. From January 1970 to January 18, 1970
3. From May 1974 to December 2, 1974.

During the first period they were living apart and met only at weekends. There is no evidence of any cruelty during this period.

The second period is the short period of about three weeks when they set up their matrimonial home at Johor Bahru. There were some petty quarrels and I find that the petitioner left the matrimonial home on that occasion without cause. I do not propose to go into the details of the petty quarrels because in my opinion they do not constitute cruelty and even if they do, such cruelty was condoned by the petitioner by her living and cohabiting with the respondent from May 1974 to December 2, 1974, which is a period of well over six months. It is in fact conceded by counsel for the petitioner that all acts of cruelty on the part of the respondent prior to May 1974 are in law deemed to have been condoned by the petitioner.

This brings me to the third phase of their marriage *i.e.* from May 1974 to December 2, 1974. The petitioner relies on three incidents which took place during this period and she says that the cumulative effect of those incidents was that she became so frightened of living with him, that she could not stand it any longer and had to leave him.

The first incident occurred on October 29, 1974 and it was over their son's illness. The respondent took their son to see a specialist at the General Hospital, a Dr. Gunaretnam and came back with some medicine. The petitioner took the medicine to a dispenser at a clinic at Serangoon Gardens Estate to countercheck if it was the right medicine. Because of that there was a quarrel between the petitioner and the respondent. The petitioner says she was slapped — hard on the ear — but she did not see a doctor about it.

The second incident was on November 14, 1974 over the telephone bill. There was a quarrel and they scratched each other. She says that the respondent made their son fetch a fork and that the respondent threatened to scratch her with a fork but did not do so. Again she did not see a doctor.

The third incident took place on November 24, 1974. The respondent was doing physical exercises at their home. He requested the petitioner to hold and steady his legs while he stood on his head. In the course of this exercise one of his legs came into contact with the petitioner's nose and it bled. This was clearly a pure accident.

In my judgment, the evidence relied upon by the petitioner in this case is insufficient to constitute cruelty. I dealt fully with the law relating to cruelty in *Koh Teng Lam* v. *Elsie Koh*[1] and it is unnecessary to go again through all the leading cases which were examined by me in that case. I stated in *Koh Teng Lam's* case:

"The cases show that one basic or fundamental factor on which rests the whole concept of legal cruelty is injury to the petitioner's health or apprehension of it. That is the golden thread that runs through all the cases in which cruelty has been successfully established. If there is no injury and no danger of it, there is no legal cruelty. That in fact is the ratio *decidendi* of the oft quoted case of *Russell* v. *Russell* [1897] A.C. 395."

The petitioner's case is that when she left the matrimonial home for the last time on December 2, 1974 she was physically and mentally sick and she could not live any further with the respondent. I find that apart from the petitioner's own word, there is no evidence at all to support this allegation. No medical evidence has been called. There is no evidence that because of the respondent's conduct the petitioner's health was affected or that she had a nervous break-

down or is likely to have one if she continues to live with him. Such an allegation, if true, can be easily proved by calling medical evidence or evidence of other witnesses. There is no such supporting evidence and having seen and heard the petitioner I find it difficult to believe her story.

The evidence shows that the real reason why the petitioner left the matrimonial home on December 2, 1974 was because the respondent had indicated that he wanted her and their son to go with him to Malaysia for a holiday. The petitioner did not wish to accompany him on such a holiday and being afraid that he may go with their son on a holiday to Malaysia, she left the matrimonial home with her son while the respondent was away. When the respondent returned to the matrimonial home in the evening he was handed by the petitioner's brother a solicitor's letter requesting him to leave the matrimonial home. The respondent was thus thrown out of the matrimonial home. This is not denied by the petitioner.

In a case of this nature the conduct complained of must be looked at as a whole and it must be looked at in the light of the sort of people the parties are. There is no evidence of actual violence of such a character as to endanger personal health or safety. The incidents relied upon by the petitioner are nothing more than little domestic squabbles between two strong headed persons. The petitioner appeared to me to be a strong minded person, very intelligent, not very submissive and one who would not knuckle under the respondent in any argument. She admitted that she was argumentative but "not at every turn." And although the respondent did not give evidence in this case, it is clear from the evidence, that he must be equally strong-headed.

The burden of proof is on the petitioner and she has to prove cruelty beyond a reasonable doubt. In my judgment the petitioner has failed to prove that there is danger to her life, limb or health, bodily or mental, or a reasonable apprehension of it. Accordingly, her petition for divorce is dismissed. By consent, custody of the child of the marriage, Ganesh Raj, is granted to the petitioner with liberty for the respondent to apply for custody later if he so wishes.

Petition dismissed.

Solicitors: *Vaithinathan & Co.; J.B. Jeyaretnam & Co.*

MALAYSIAN REPORTS

PUBLIC PROSECUTOR v. OH KENG SENG

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) February 21, 1976]

[Kuala Lumpur — Federal Court Criminal Appeal No. 18 of 1975]

Criminal Law and Procedure — Appeal from High Court exercising criminal revision — Order of High Court that former President of Sessions Court who had been appointed Deputy Public Prosecutor incompetent to continue hearing criminal case — Whether criminal matter and therefore Federal Court has no jurisdiction to hear appeal — Courts of Judicature Act, ss. 50 and 64.

This was an appeal from the decision of Ajaib Singh J. (reported at [1976] 1 M.L.J. 143). The learned judge had held that a President of a Sessions Court who had been transferred and appointed a Deputy Public Prosecutor was not competent to continue a part-heard criminal case. He held that the case should be heard by the new President of the Sessions Court.

Held: the order of the High Court was made in a criminal matter and therefore the Federal Court has no jurisdiction to hear the appeal.

Cases referred to:-

(1) *P.P.* v. *Kulasingam* [1974] 2 M.L.J. 26.

(2) *Mohamed Idris bin Haji Mohamed Said* v. *Rex* [1949] M.L.J. 31.

(3) *Teay Wah Cheong* v. *P.P.* [1964] M.L.J. 21.

(4) *Gurbachan Singh* v. *P.P.* [1968] 1 M.L.J. 115.

(5) *Clifford and O'Sullivan* [1921] 2 A.C. 570.

(6) *Amand* v. *Home Secretary & Anor.* [1943] A.C. 147, 161.

FEDERAL COURT.

Haji Abdullah Ngah (Senior Federal Counsel) for the appellant.

Yeap Ghim Guan for the respondent.

Wan Suleiman F.J. (delivering the judgment of the Court): This appeal arose out of an application heard by the learned judge at Seremban, which was made on behalf of one Oh Keng Seng who was charged under section 4(2)(b) of the Sedition Act in the Sessions Court at Seremban.

The trial of that case commenced before Encik Abdul Khalid bin Abdul Manaff.

It would appear that the trial in the Sessions Court commenced on March 1, 1974 and had already taken 6 days, spread out over a period of a year and two months — four days in June 1974 and on May 5 and 6, 1975. A total of 12 prosecution witnesses had given their testimony and the 13th and last witness for the prosecution had completed his evidence-in-chief and was awaiting cross-examination by the defence.

When the case came up for hearing again on May 5, 1975 Encik Abdul Khalid had already been posted to Kedah as a Deputy Public Prosecutor, though as appears to be the usual practice his appointment as a President of the Sessions Court had not been revoked. Before any further evidence could be recorded Mr. Yeap Ghim Guan, counsel for the defendant/applicant objected to Encik Abdul Khalid continuing to hear the case, but his objection was overruled by the latter.

The present application was then made and though it was not founded on any specific provisions